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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,372	12/24/2001	Jean Marc Paulin	3882/12	8034
29858	7590	08/18/2006	EXAMINER ORTIZ, BELIX M	
BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP 900 THIRD AVENUE NEW YORK, NY 10022			ART UNIT 2164	PAPER NUMBER

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/026,372

Applicant(s)

PAULIN, JEAN MARC

Examiner

Belix M. Ortiz

Art Unit

2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8-10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-10, 12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Remarks*

1. In response to communications files on June 15, 2006. Therefore, claims 1-6, 8-10, and 12-14 are presently pending in the application.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. Claims 1-6; 9-10; and 12-14 are rejected under 35 U.S.C. 103(a) (Eff. Filing date of application 12/24/2001) as being unpatentable over Reps et al. (U.S. patent 6,070,190) (Eff. Filing date of application 5/11/1998) in view of Dean et al. (U.S. patent 6,442,585) (Eff. Filing date of application 11/26/1997).

As to claim 1, Reps et al. teaches a method for determining a level of service for a server in a network, (see figures 1 and 2; column 2, lines 25-31; column 2, lines 49-54 and column 4, lines 12-15) the method comprising:

at a first computer couple to the network (see figure 1);

a user performing one or more steps as part of a transaction involving use of the service, the one or more steps being performed according to one or more parameters (see column 5, lines 24-30; column 9, lines 1-13 and column 25, lines 13-19);

transaction recorder software residing on the first computer recording the one or more steps and the one or more parameters in a transaction data file (see column 2, lines 64-67; column 3, lines 1-8; column 5, lines 46-54; column 11, lines 602-67; column 12, lines 16-26; and claim 43); and

sending the transaction data file from the first computer, to a second computer couple to the network (see figure 1 and column 6, lines 15-23);

at the second computer, service software residing on the second computer:

identifying the one or more steps and the one or more parameters in the transaction data file (see column 23, lines 27-48); and

determining the level of service for the server based on the executing (see figures 1; column 2, lines 25-35; column 4, lines 12-15; and column 23, lines 35-39).

Reps et al. teaches executing the one or more steps using the one or more parameters (see column 5, lines 24-30; column 5, lines 38-45 and claim 1, steps B-D); but Reps et al does not expressly teach to thereby replicate the transaction performed by the user.

Dean et al. teaches method for scheduling contexts based on statistics of memory system interactions in a computer system (see abstract), in which he teaches replicate the transaction performed by the user (see column 13, lines 38-58).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Reps et al. by the teaching of Dean et al., because executing the one or more steps using the one or more parameters to thereby replicate the transaction performed by the user, would enable the method because,

“Information about the type of accesses (e.g., reads, writes, and invalidates) can further guide the decision of whether to replicate or to migrate, or to leave the data in place. For example, data that are frequently written by multiple processors (e.g., write-shared pages) should probably not be replicated or migrated, while data that are frequently read but only infrequently written (e.g., read-shared pages) are good candidates for replication”, (see column 13, lines 42-54).

As to claim 2, Reps et al. as modified teaches the method further comprising aborting the step of retrieving when a timeout threshold is exceeded (see Reps et al., column 5, lines 31-37).

As to claim 3, Reps et al. as modified teaches wherein the parameters comprise an address and port of the information resource (see Reps et al., column 5, lines 46-54).

As to claim 4, Reps et al. as modified teaches the method further comprising generating at the first computer conditional logic used to instruct service software at the second computer as to a service level code to return based on the service software's time to retrieve the information resource (see Reps et al., figures 1 and 2; column 12, lines 66-67; column 13, lines 1-9; and column 16, lines 7-11).

As to claim 5, Reps et al. as modified teaches wherein the generating conditional logic comprises generating conditional logic defining service levels of GOOD,

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MARGINAL, and FAILED (see Reps et al., column 2, lines 28-34; column 3, lines 39-42; and column 4, lines 5-14).

As to claim 6, Reps et al. as modified teaches wherein recording comprises recording the step information in a hierarchy, each step comprising an entry in the hierarchy with the data in the transaction data file being a top level of the hierarchy (see Reps et al., column 2, lines 66-67; column 3, lines 1-3; and column 5, lines 42-46).

As to claim 9, Reps et al. as modified teaches the method further comprising calculating an amount of time to execute the first step (see Reps et al., column 2, lines 25-37 and column 6, lines 6-10).

As to claim 10, Reps et al. as modified teaches wherein the step of determining the level of service comprises determining the level of service based on the amount of time required to execute the first step (see Reps et al., column 17, lines 6-17).

As to claim 12, Reps et al. as modified wherein the one or more steps include retrieving an information resource hosted on the server (see Reps et al., column 4, lines 15-32 and column 9, lines 1-23).

As to claim 13, Reps et al. as modified wherein the transaction recorder software determines a level of service at the first computer based on the one or more

steps performed by the user, and wherein generating the first conditional logic is based on the determined level of service at the first computer (see Reps et al., column 2, lines 25-35 and column 4, lines 12-15).

As to claim 14, Reps et al. as modified wherein the user performing one or more steps comprises the user performing a plurality of steps including a first step and one or more subsequent steps (see Reps et al., figures 4 and 13).

4. Claim 8 are rejected under 35 U.S.C. 103(a) (Eff. Filing date of application 12/24/2001) as being unpatentable over Reps et al. (U.S. patent 6,070,190) (Eff. Filing date of application 5/11/1998) in view of Dean et al. (U.S. patent 6,442,585) (Eff. Filing date of application 11/26/1997) as applied to claim 1-6, 9-10, and 12-14 above, and further in view of Marullo et al. (U.S. patent 6,044,398) (Eff. Filing data of application 11/21/1997).

As to claim 8, Reps et al. does not teach the method further comprising, at the second computer:

identifying one or more subsequent steps in the transaction data file;  
executing the one or more subsequent steps by attempting to retrieve information resources identified by the subsequent one or more steps; and  
returning respective levels of service for respective servers hosting the respective information resources identified in the one or more steps.

Marullo et al. teaches virtual dynamic browsing system and method for automated web server and testing (see abstract), in which he teaches the method further comprising, at the second computer:

identifying one or more subsequent steps in the transaction data file (see column 30, lines 54-57);

executing the one or more subsequent steps by attempting to retrieve information resources identified by the subsequent one or more steps (see column 3, lines 10-12); and

returning respective levels of service for respective servers hosting the respective information resources identified in the one or more steps (see column 6, lines 30-37).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Reps et al. by the teaching of Marullo et al., because the method further comprising, at the second computer:

identifying one or more subsequent steps in the transaction data file;

executing the one or more subsequent steps by attempting to retrieve information resources identified by the subsequent one or more steps; and

returning respective levels of service for respective servers hosting the respective information resources identified in the one or more steps, would enable the method to retrieve the next step the transaction needs to perform, to finish with the transaction of the user and depending on the execution of the transaction is the level of service.



*Response to Arguments*

5. Applicant's arguments filed 15-June-2006 with respect to the rejected claims in view of the cited references have been half considered:

In response to applicants' arguments that Reds or Dean "does not teach transaction recorder software residing on the first computer recording the one or more steps and the one or more parameters in a transaction data file; and

executing the one or more steps using the one or more parameters to thereby replicate the transaction performed by the user", the arguments have been fully considered but are not deemed persuasive, because Reps et al. teaches "a program storage device readable by a digital processing apparatus and tangibly embodying a program of instructions executable by the digital processing apparatus to perform method steps for monitoring and recording at said client computer, information related to the performance of said application services by said application program, the method comprising the steps of:

A. establishing a set of parameters for use by the client computer for recording the performance of said application services by said application program, wherein said set of parameters may include the definition of an interval for iteratively assessing the performance of the application program" (see Reps et al., claim 43).

Dean et al teaches, "Information about the type of accesses (e.g., reads, writes, and invalidates) can further guide the decision of whether to replicate or to migrate, or to leave the data in place. For example, data that are frequently written by multiple processors (e.g., write-shared pages) should probably not be replicated or migrated, while

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data that are frequently read but only infrequently written (e.g., read-shared pages) are good candidates for replication”, (see Dean et al., column 13, lines 38-58).

### ***Conclusion***

6. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Belix M. Ortiz whose telephone number is 571-272-4081. The examiner can normally be reached on Monday-Friday 9am-5pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

bmo

August 15, 2006



**CHARLES RONES**  
**SUPERVISORY PATENT EXAMINER**